

IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF PENNSYLVANIA

DAVID E. HALLMAN,	:	
Petitioner,	:	
v.	:	Civil Action No. 03-278J
GEORGE PATRICK, SUPERINTENDENT,	:	
S.C.I. RETREAT,	:	
Respondent	:	

MEMORANDUM ORDER

This matter was referred to Magistrate Judge Keith A. Pesto for pretrial proceedings in accordance with the Magistrates Act, 28 U.S.C. § 636(b)(1), and subsections 3 and 4 of Local Rule 72.1 for Magistrate Judges.

The Magistrate Judge filed a Report and Recommendation on March 6, 2006, docket no. 12, recommending that the petition be denied as untimely, and a certificate of appealability denied.

The parties were notified that pursuant to 28 U.S.C. § 636(b)(1), they had ten days to serve and file written objections to the Report and Recommendation. Petitioner filed timely objections, docket no. 13, but the objections are meritless. Petitioner argues that because the Prothonotary of the Pennsylvania Supreme Court gave him incorrect information in 1999, and PCRA counsel abandoned him in 2000, the statute of limitations to file a federal habeas corpus petition was tolled from February 2001, when the Supreme Court denied his nunc pro tunc petition for allowance of appeal, until December 2003, when the federal petition was filed. This would be true only if it were "reasonably diligent" of petitioner to file a motion to modify sentence in

February 2001, and to pursue a second PCRA petition in February 2002, instead of filing a federal petition. The concept of reasonable diligence cannot be stretched to the point that petitioner's failure to take the correct action to bring his claims into federal court is excused by a flurry of legally improper alternative actions in state court. To conclude otherwise would ignore the holding of Pace v. DiGuglielmo.

After de novo review of the record of this matter, together with the Report and Recommendation and the timely objections thereto, the following order is entered:

AND NOW, this 27th day of March, 2006, it is

ORDERED that the petitioner's petition for a writ of habeas corpus is denied. A certificate of appealability is denied. The Report and Recommendation is adopted as the opinion of the Court. The Clerk shall mark this matter closed.

BY THE COURT:

A handwritten signature in black ink, appearing to read 'Kim R. Gibson', written over a horizontal line.

KIM R. GIBSON,
UNITED STATES DISTRICT JUDGE

Notice to:

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